

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION**

In re:

BKY No. 04-45063

Chapter 7

Eric C. Miller and Jill M. Miller,

Debtors.

**DEBTOR'S RESPONSE AND STATEMENT OF OPPOSITION
TO MOTION FOR RELIEF FROM STAY**

TO: The Honorable Robert J. Kressel, Judge of U.S. Bankruptcy Court, the Office of United States Trustee, Dorraine A. Larson, Esq., and all other parties-in-interest.

COMES NOW, Debtor Eric C. Miller ("Debtor"), by and through his undersigned attorney and as and for his response to the motion of Timothy J. DeWuske ("Movant") for relief from stay, states and alleges as follows:

1. Debtor opposes the motion Movant's motion for relief from stay and requests that the court deny the motion.
2. Movant's claim arises out of a contested action. Prior to the commencement of this case, Debtor owned and operated a construction company. Movant's claim arises out of a contract dispute between the parties. That dispute is the subject of contested litigation. Debtor and his company have answered the Complaint in that litigation and denied that they have breached the contract.
3. Debtor fundamentally disputes that his company or he are liable to the Movant.
4. Movant's motion is predicated upon the assertion that they are only seeking to liquidate the claim against the Debtor and for the purpose of obtaining a judgment in order to apply for reimbursement from the recovery fund

maintained by the Minnesota Department of Commerce. Movant makes it appear as though this course of action is innocuous and will have no adverse affect on the Debtor, and he therefore does not have to defend the action.

5. Movant's position is predicated upon treating the recovery fund maintained by the Minnesota Department of Commerce as though it were an insurance policy with a third party payment, with no adverse consequences to the Debtor. This construction is in error.
6. The payment of claim against the state may result in the revocation of the debtor's general contractor license. In addition, the State maintains that the state's claim for reimbursement against the Debtor is non-dischargeable
7. In order to avoid these potentially adverse consequences, the Debtor will be put to the expense of having to defend the underlying state court action.
8. Movant would essentially subvert the provisions of the United States Bankruptcy Court by avoiding an adjudication of the dischargeability of the underlying claim. By granting relief from stay, as requested by the Movant, the court would deprive the Debtor of proper adjudication of the dischargeability of the Movant's claims, and he will be forced to, nonetheless, defend the state court action on the merits..
9. Debtor maintains that because the claims are based on breach of contract, and because he denies liability, the claims of the Movant should be discharged in bankruptcy. By granting relief from stay, the Movant would circumvent procedures for determination of the dischargeability of the claims.

FOR THE FOREGOING REASONS, Movant's motion for relief from stay should be denied.

Respectfully submitted,

Joseph W. Dicker, P.A.

Dated: October 25, 2004

/s/ Joseph W. Dicker
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UNSWORN DECLARATION OF MAILING

Joyce L. Tomlinson, of the City of Minneapolis, County of Hennepin, State of Minnesota, upon penalty of perjury, hereby says that on October 25, 2004, she served the attached Debtor's Response and Statement of Opposition to Motion for Relief from Stay and Affidavit of Eric Miller and United States Mail upon the following:

Lori Abbott, Esq.
Schneider, Baudler & Abbott, PC
8525 Edinbrook Crossing #208
Brooklyn Park, MN 55443

Doraine A. Larson
1010 West St. Germain
Room 600
St. Cloud, MN 56301

Office of US Trustee
1015 US Courthouse
300 South Fourth Street
Minneapolis, MN 55415

by mailing to each of them true and correct copies thereof, enclosed in an envelop, postage prepaid, and depositing same in the post office at Minneapolis, Minnesota, directed to said parties-in-interest at the address indicated.

/s/ Joyce L. Tomlinson

Joyce L. Tomlinson